DOCUMENT RESUME

ED 121 012 95 EC 082 521

TITLE	Change in Education: Three Policy Papers on the Implementation of the "Education for All Handicapped Children Act", PL 94-142.
INSTITUTION	Educational Testing Service, Washington, D.C.
SPONS AGENCY	Bureau of Education for the Handicapped (DHEW/OE), Washington, D.C.
PUB DATE	Feb 76
NOTE	43p.; Prepared by the Education Policy Institute
EDRS PRICE	MF-$0.83 HC-$2.06 Plus Postage
DESCRIPTORS	Administrative Change; *Educational Change; Equal Education; Exceptional Child Education; Federal Legislation; *Financial Policy; *Handicapped Children; Identification; Individualized Instruction; Policy Formation; *Public Policy
IDENTIFIERS	*Education For All Handicapped Children Act; PL 94 142

ABSTRACT

Intended to aid the implementation of The Education for All Handicapped Children Act (PL 94-142), three papers on critical issues are presented. The need for a comprehensive program of identification of handicapped children is addressed in such terms as definitions of handicapped, responsibilities for identifying the children, agreement on type of federal regulations, and identification procedures. A second paper focuses on content, implementation and monitoring of individualized educational plans. The final paper analyzes the law's major funding provisions and reviews the policy issues of inadequate resources, excess costs, erosion of services, state discretion, local education agencies' eligibility, and the interaction of federal and state programs. (CL)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

ED121012

EC

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

CHANGE IN EDUCATION: THREE POLICY PAPERS ON THE IMPLEMENTATION OF THE "EDUCATION FOR ALL HANDICAPPED CHILDREN ACT," PL 94-142

Prepared at
The Education
Policy Research Institute
of the
Educational Testing Service

1527 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Rosedale Road
Princeton, N.J. 08540

EC002521

The Education Policy Research Institute (EPRI) is a new research division of the Educational Testing Service. It was founded on January 1, 1975 by Joel S. Berke with his colleagues from the Washington offices of the Educational Finance and Governance Center of Syracuse University Research Corporation. Since then, new staff members have been added in both the Washington and Princeton offices.

The Institute addresses policy issues central to educational finance and governance such as equity in resource allocation, uses of educational assessment, and effectiveness of alternative educational strategies. These problems are approached from an interdisciplinary perspective: educational, administrative, sociological, political, economic, legal, and anthropological.

EPRI maintains working relationships with the Columbia Teachers College, the Eagleton Institute of Rutgers University, the Education Law Center, Inc., the Legislators' Education Action Project of the National Conference of State Legislatures, the National Lawyers' Committee for Civil Rights Under Law, the New Jersey Education Reform Project, and the Woodrow Wilson School of Princeton University.

Joel S. Berke, Director

ED121012

CHANGE IN EDUCATION: THREE POLICY PAPERS ON THE IMPLEMENTATION OF THE "EDUCATION FOR ALL HANDICAPPED CHILDREN ACT," PL 94-142

by

Education Policy Research Institute
of
Educational Testing Service

prepared for

Bureau of Education for the Handicapped
U. S. Office of Education

February 1976
Washington, D. C.

EC 082521

EDUCATIONAL TESTING SERVICE WASHINGTON, D.C. 20036

Education Policy
Research Institute

1527 New Hampshire Ave., N.W.
Washington, D.C. 20036

(202) 234-3500

March 2, 1976

Dr. Edwin Martin
Associate Commissioner
Bureau of Education for
the Handicapped
7th and D Streets, S. W.
Room 2100
Washington, D. C.

Dear Ed:

I am hereby transmitting five copies of the revised final report Change In Education: Three Policy Papers on the Implementation of "The Education for All Handicapped Children Act," PL 94-142, prepared under USOE order number P00760128. The papers are intended to assist in the implementation of that landmark law by providing analyses of areas in which substantial policy issues arise. At the behest of the Bureau of Education for the Handicapped, the report focuses on the following three issues:

- the need for a comprehensive program of identification of handicapped children;
- the need for individual educational plans for each handicapped child; and
- the financing of educational services to the handicapped.

The three papers have been combined into a single document for presentation.

In developing this document, it was not our intent to criticize the law, nor to devise alternative financing systems or programmatic approaches. Rather, we have attempted to identify critical policy issues that will have to be dealt with in order for the promise of the legislation to become educational reality.

THE EDUCATION POLICY RESEARCH INSTITUTE MAINTAINS OFFICES IN WASHINGTON, D.C. and PRINCETON, N.J.

My colleagues Joan Baratz, Terry Hartle, and Judy Sinkin were fully involved in both the research and writing. We appreciated the opportunity to participate in the process of carrying out the historic mandate of the "Education for all Handicapped Children Act," and hope that our studies prove to be of use in the development of effective policies, regulations, and guidelines for its implementation.

With all best wishes,

Sincerely,

Joel S. Berke
Director

JSB/gg
cc: Robert Herman

TABLE OF CONTENTS

	Page
INTRODUCTION	1
CHAPTER I - IDENTIFICATION OF ALL HANDICAPPED CHILDREN	3
Who are the Children?	4
Who is Responsible for Identification?	6
Type of Regulations	7
Identification at the Local Level	9
How are the Handicapped to be Identified?	11
Resources in Identification Process	11
Procedures in Identification	12
CHAPTER II - INDIVIDUALIZED EDUCATION PROGRAMS	15
Content of Individualized Plans	16
Developing and Implementing Individualized Plans	17
Administering and Monitoring Individualized Plans	20
State Agency Coordination	20
Monitoring Individualized Plans	21
CHAPTER III - FINANCING OF EDUCATIONAL SERVICES FOR THE HANDICAPPED	23
State Entitlements	23
Incentive Grants	26
Policy Issues	26
Inadequate Resources	26
Excess Costs	28
Erosion of Services	30
State Discretion	31

TABLE OF CONTENTS
(Continued)

Page

LEA Eligibility..... 32

Interaction of State and Local Programs..... 33

CONCLUSION..... 35

INTRODUCTION

Educational opportunities for the handicapped have been substantially advanced during the past decade. Judicial decisions, state laws, and, most recently, extensive federal legislation have been the vehicles for new protections and programs for the public education of exceptional children. Yet much of what has been accomplished is still promise rather than performance. Whether that new framework of judicial protection and legislative enactments can effectively meet the needs of handicapped children will be determined by the resolution of a number of difficult policy issues. These include the following concerns:

- that all handicapped children are identified and receive an appropriate education;
- that in their diagnosis and treatment due process is accorded and confidentiality of records is preserved;
- that non-discrimination of placement and services is observed; and
- that adequate financing is provided, coordinated with state and local efforts, and effectively administed and monitored.

The relevance of these policy issues to the success of federal legislation on the handicapped is evident from a brief review of the major provisions of PL 93-380 and PL 94-142. The former mandates that each state:

- prepare a comprehensive planning document establishing a goal of full educational opportunity for each handicapped child;
- establish procedures for identifying, locating, and evaluating all handicapped children;
- assure due process in the diagnosis and treatment of handicapped children;
- demonstrate how it prohibits the classification of children in a racially or culturally discriminatory manner;

- educate handicapped children in the "least restrictive environment;"
- establish as a priority the creation of programs for handicapped children not currently receiving an education; and
- broaden the funding basis by changing the grant program into an entitlement based on the number of children in average daily attendance (ADA).

To these mandates PL 94-142 adds the requirement that states develop an individualized education program for each handicapped child. In addition, states will now receive federal funds on the basis of the number of handicapped children who are already receiving services in the state. Under the previous formula state entitlements were based on ADA.

Whether these ambitious provisions can function successfully and avoid some of the administrative problems that have plagued the implementation of other federal programs has yet to be determined. The manner in which the law is implemented affects and is affected by the constituencies involved. Effective implementation involves identifying potential issues implicit in the legislation and developing approaches to meeting them that will best serve the law's purposes.

These three papers are intended to aid in the discussion of policy issues central to improving the education of the handicapped and of the potential leadership that can be provided by the Bureau of Education for the Handicapped (BEH). As a stimulus to productive communication our aim is to pose questions that will focus discussion on the role of BEH in assisting states to meet their legal obligations to handicapped children in three important policy areas:

- identification of all handicapped children;
- provision of individual educational programs; and
- financing of educational services for the handicapped.

CHAPTER I

IDENTIFICATION OF ALL HANDICAPPED CHILDREN

The need for more accurate identification and definition of groups for whom special services might be delivered has been intensified by legal requirements and parental demands that public school systems meet the need of handicapped and exceptional children. Several studies have left no doubt that current identification efforts are inadequate. A RAND study suggests that:

- a significant portion of the handicapped population is not served;
- the number of unserved children is unknown; and
- effective out-reach programs to identify the population in need do not exist.[1]

Identification refers to the recognition, correct assessment, and follow-up of both a child's abilities and disabilities. Clearly, the success or failure of the Education For All Handicapped Children Act will depend heavily on the degree to which problems encountered in identifying handicapped children under previous programs can be overcome. Three areas where states might need assistance appear to be:

- establishing definitions of the handicapped;
- fixing responsibility for their identification; and
- establishing procedures for proper identification.

---

[1]Garry Brewer and James Kakalik, Improving Services to Handicapped Children, Vol. IV. Prepared for the Department of Health, Education and Welfare, Office of the Assistant Secretary for Planning and Evaluation, May 1974, p. 21.

In short, defining which children are to be considered handicapped for purposes of legislation, who will be responsible for locating such children, and what techniques will be employed to identify them are critical questions which must be adequately resolved for effective implementation of federal and state aid to education for the handicapped.

Who are the Children?

The term "handicapped" is usually defined very broadly. In 1965 Congress declared:

> The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled or other health impaired....The term also includes children with specific learning disabilities to the extent that such children are health impaired.[1]

According to one scholar:

> ...there remains basic disagreement over an acceptable set of criteria that can be used in diagnosing and identifying a mentally retarded, learning disabled, or emotionally disturbed child.[2]

Recent surveys that have examined the existing data on children with special needs have all commented on its inadequacy. Complaints about the reliability of the information have ranged from undercounting in certain areas to mislabelling and overcounting in others.[3] The major difficulty

---

[1]See Rules and Regulations for the Education of the Handicapped Act (EHA), Public Law 91-230, Title VI, and the Regulations for Title I of ESEA of 1965, as amended.

[2]Patricia Craig, "Counting Handicapped Children," Journal of Education Finance, Vol. I, Winter 1976, p. 319.

[3]Brewer and Kakalik, Improving Services, p. 13.

with collecting data on the handicapped is the vague and varying definitions employed by different agencies. Some terms for the handicapped appear to be "wastebasket" terms for children who do not easily fall into other categories -- in the late fifties and early sixties a frequent term was "early childhood aphasia," currently the term is "learning disabilities." In some places "learning disabilities" may denote a child with specific neurological problems, whereas in other instances the term may extend simply to children with reading problems.

Not only is there confusion as to the type of special needs but also as to the severity of need. In some cases impairment and handicap are disparate -- e.g., hard-of-hearing and deaf; in other instances there is no such distinction -- e.g., visual handicap may encompass children with problems that range from minor visual impairments correctable by eye glasses to children who are legally blind.

Another major problem with identification of the handicapped is mislabelling. In Hobson v. Hansen [1] the plaintiff demonstrated that special education classes for educable retarded children were in fact dumping grounds for children who were troublesome but not retarded by the IQ standard established by the District of Columbia. In California, Diana v. State Board of Education[2] demonstrated that Spanish speaking children with little knowledge of English were incorrectly classified as mentally retarded when tests were administered in English. Numerous other decisions have successfully challenged the incorrect placement of black and other minority

---

[1] Hobson v. Hansen, 327 F. Supp. (D.D.C. 1971).

[2] Diana v. California State Board of Education, Civ. No. C-70 37 RFP (N. D. Cal., 5 February 1970).

group students in classes for the retarded on the basis of tests subsequently held to be racially or ethnically biased.[1]

While provisions regarding parent participation and the assurance of due process will serve to alleviate some of the mislabelling problems, it is evident that clarity of definition as to what constitutes a particular handicap is an essential element in the identification process. Without it, monitoring by the state and federal government is most difficult, and the likelihood of abuse and mislabelling is great. The questions for the role of the federal government then become:

> Is it feasible or desirable for the federal government to produce a uniform classification system concerning type and severity of handicaps?
>
> How will such a classification system affect the states that already have legislation concerning the identification and treatment of handicapped children, particularly those states that tie funding to type of services needed rather than type of handicap?

Who is Responsible for Identification?

PL 94-142 assigns responsibilities for identifying handicapped students to local, state, and federal officials. The local education agencies (LEAs) and the state education agencies (SEAs) must assure that all handicapped children will be identified, located, evaluated, and properly served. The U.S. Commissioner of Education is responsible for monitoring the state procedures and reporting to Congress the results of state and local efforts.

---

[1] David Kirp, W. Buss, and Peter Kuriloff, "Legal Reform of Special Education: Empirical Studies and Procedural Proposals," California Law Review, Vol. 62, No. 1, January 1974, p. 63.

The legislation does not specify the identification process beyond these simply stated requirements.

Responsibilities for monitoring the implementation of a comprehensive identification program rests with both federal and state authorities. At the federal level the disinclination to strictly monitor program effectiveness of state and local administrators is well known. Often there is an "old boy" relationship between federal bureaucrats and state officials that is not conducive to effecting change in state and local attitudes or procedures. While the promulgation of regulations that provide criteria for identifying specific disabilities and the review of data that must be submitted by state and local agencies will provide the federal government with a baseline for monitoring, what other steps or procedures are necessary or desirable at the federal level?

Type of Regulations

Agreement on the appropriate type of federal regulations is not easy to achieve. One viewpoint maintains that effective compliance is stimulated by regulations that "sweeten the medicine." An alternative approach suggests that the federal government should "speak firmly and carry a big stick." While there may be a need for comprehensiveness, a fine line must be drawn to avoid inhibiting innovation through over-regulation. If the regulations become too complex, school staffs may have difficulty identifying pupils and achieving the ambitious reform goals. Budoff addressed this point when he noted the impact of the complex regulations in the Massachusetts reform legislation, Chapter 766:

> School systems facing the threat of legal action can become obsessed with meeting the letter of the regulations rather than pioneering practices to meet the spirit of the reform. The pressure

> for compliance, along with the state's listing of complex procedures, can throttle what little innovative energy school bureaucracies possess.[1]

This suggests that regulations for PL 94-142 at the federal and state levels must address fundamental educational questions, provide some criteria for diagnosing and identifying specific handicaps, include the procedural safeguards mandated in the legislation, and yet not be so complex that educational progress is stifled.

Determination of the appropriate federal stance is further complicated because individual state departments vary considerably in leadership, responsibility, and effectiveness of programs for the handicapped. Some departments assume a positive, aggressive leadership role in fostering the development of special education programs. Others serve primarily as regulatory and fiscal processing agencies and depend upon LEAs to initiate new programs. This, as well as prior experience, suggests that some states will be reluctant to impose program priorities or to monitor local activities. The important questions become:

> Should the federal government offer incentives to the states to assist them in their task of identifying all handicapped children? If so, what types of incentives can be designed?
>
> What enforcement procedures can the federal officials use to assure that the state departments comply with the regulations?
>
> Should "assistance" or "assurance" (or both) be the stance of the federal government vis-a-vis the state departments?
>
> What steps can the federal government take to insure effective monitoring of identification programs in light of these organizational constraints?

---

[1] Milton Budoff, "Engendering Change in Special Education Practices," Harvard Education Review, Vol. 45, No. 4, November 1975, p. 524.

State Agency Coordination

In addition to the organizational problems, PL 94-142 poses a more complicated responsibility for SEAs than the mere monitoring of LEAs. The law holds the SEAs responsible for identifying, locating, and evaluating the education and related services that all handicapped children in the state receive regardless of whether or not those children are in institutional settings under the jurisdiction of the SEAs. Surely state and local educational administrators should have the ability to effectively communicate with and monitor the work of other agencies and community groups involved in identifying the handicapped. Communications between education, welfare, and health agencies, for example, should be encouraged. While seeking such administrative cooperation and coordination is not a new concept, previous efforts have met with little success. Frequently, attempts to stimulate coordination suffer from a lack of authority to carry through needed changes. In other cases such efforts are hindered by the pluralistic character of the groups involved and the resulting conflict over goals, authority, and methods. The issue then is:

> What new steps or procedures might the federal or state governments initiate that might facilitate interagency cooperation and increase the likelihood of success in identification, evaluation, and treatment of all handicapped children?

Identification at the Local Level

Implementing a comprehensive identification and screening program will require the participation of a wide range of individuals at the local level including, but not limited to, teachers, parents, principals, administrators, advocacy groups, specialists, and volunteer agencies. Clearly,

such a diverse group cannot be expected to translate principle into practice without considerable assistance from special education experts and state agency administrators who can assist local level personnel in understanding the complexities of the law and the ensuing regulations. Without assistance, the weight of compliance and procedural safeguards may stifle local efforts at initiating innovative programs. By holding seminars, meetings, and training programs, state education agencies can provide an orientation for those directly involved in the administration of special education at the local level.

While the SEAs are responsible for identification of all handicapped children and while there are many links that must be made with the local education agencies as well as other public and private institutions and agencies, a critical actor in the identification process is the family of the handicapped child. The greater the information available to parents concerning the rights and responsibilities of the state in relation to their child's educational needs, the greater the probability of successful identification of all handicapped children. Policy questions include:

> Can provision be made for on-going training sessions to improve skills and facilitate communication between the family and other groups with responsibility for identification and screening?
>
> Who will pay for the expenses involved in designing orientation programs?
>
> What other forms of "technical assistance" may be helpful in implementing the law?

How are the Handicapped to be Identified?

The many definitions and criteria of handicap suggest that rules and regulations regarding the identification of handicapped children be carefully drawn. This is especially important in a program as comprehensive as the mandate in PL 94-142.

Resources in Identification Process

The procedures and efficiency of any identification program will be influenced by a variety of factors, including the severity or complexity of the handicap and the availability and ease of access to trained personnel. A critical element in the identification process is that it go beyond traditional school communication networks. Discussions with individuals familiar with existing state identification plans indicate that states have tended to devise systems that:

- rely heavily on existing procedures -- e.g., state mandated health census;
- fail to go beyond the school system authority in identifying handicapped children;
- build upon children already in school as the conduit for outreach, thus restricting the potential target population; and
- vary considerably due to local options as to implementation and screening procedures.

While some states have attempted to broaden their outreach procedures beyond school personnel, problems of resource availability remain. For example, the state of Connecticut recognized that a variety of personnel are a necessary part of any diagnostic assessment: psychologists, special educators, classroom teachers, speech and language clinicians, social workers, medical consultants, school counselors, and school nurses.

Despite this recognition of the need for a broad-based approach to identification, the state plan suggested that the available personnel were likely to be considerably less comprehensive: classroom teachers, locally organized screening programs, and pupil personnel staff.

The use of volunteers would appear to be one alternative for reducing costs and increasing manpower in the identification effort. While there are several obvious benefits to employing volunteers, there are also some drawbacks. While volunteers are serving as "helpers" and "aides" in the identification process, there is a danger that they may become overzealous or excessive in their advocacy and thereby assume an "adversary" role vis-a-vis school officials.

The issues here center around developing comprehensive outreach programs with limited resources. The major policy considerations are:

> How can the federal government develop guidelines that will enable states to extend their outreach beyond the state education agencies?
>
> How may states be assisted in overcoming the considerable gap that is often present between the resources recognized as important in identifying and screening children and the resources most frequently tapped at the local level?
>
> How can volunteers be used most effectively? Who will be responsible for training volunteers?

Procedures in Identification

Mislabeling is a major issue in identification programs. States must develop procedures to deal with a wide range of social and cultural issues surrounding the administration and interpretation of tests as they relate to child identification programs. The legislation requires SEAs to assure

that the process does not involve testing of a racially or culturally biased nature. According to Mercer, "a system of pluralistic, multi-cultural assessment is needed" if the basic rights of children are to be preserved.[1] She suggests five rights that should be incorporated into the procedures of any diagnostic program for identifying handicapped children:

-their right to be evaluated within a culturally appropriate normative framework;

-their right to be assessed as multi-dimensional, many-faceted human beings;

-their right to be fully educated;

-their right to be free of stigmatizing labels; and

-their right to cultural identity and respect.

As large numbers of individuals -- professional educators, health experts, volunteers, parents, etc., -- become involved in the screening and identification process, disagreements are inevitable. While broad-based participation assures that one evaluator's bias does not dominate the proceedings and complex appeal procedures in the law provide parents recourse in protecting the individual child, the law does not specify methods for resolution of disagreements between evaluators. While the legislation emphasizes consensus building between evaluation personnel and parents, the regulations should address the resolution of identification and diagnostic disagreements. The fundamental issues are then:

> Are there screening devices and procedures currently available that meet the non-discrimination requirement of the law regarding the identification of children? How expensive are such procedures?

---

[1] Jane Mercer, "A Policy Statement of Assessment Procedures and the Rights of Children," Harvard Educational Review, Vol. 44, No. 1, February 1974, p. 132.

What options are available to state and local agencies that will prevent frequent recourse to the courts over identification and evaluation procedures?

How can identification procedures be established that incorporate broad based participation and still provide assurances of confidentiality of data?

CHAPTER II

INDIVIDUALIZED EDUCATION PROGRAMS

The development of "individualized education programs for each handicapped child " required by PL 94-142 raises a number of important policy questions. Primary responsibility for carrying out this mandate will fall to LEAs. However, the state must insure that LEAs meet their mandate and must also administer state-developed programs. Thus policy issues regarding individualized education programs are relevant at both the state and local levels.

The legislation regarding individual education plans requires that they contain:

- a statement of the present educational performance of the child;
- a statement of annual goals and short term instructional objectives;
- a statement of services to be provided and the extent to which the child will be educated in regular educational programs;
- objective criteria for evaluating the child's progress;
- an assurance of an evaluation not less than once a year; and
- the date when needed services will begin, in conjunction with a statement of the anticipated duration of such services.

In developing regulations to implement these provisions, considerable leeway exists for alternative interpretations. States will need guidance and assistance in three general areas:

- determining the content of such plans;
- developing and implementing plans; and
- administering and monitoring plans.

Content of Individualized Plans

One means of providing input into developing regulations is to examine state practice in administering required individual educational programs for handicapped children. Texas, one of the few states with an operational program of that kind, provides an example. LEA plans in Texas must include the following:

-a description of the child's strengths and weaknesses;

-a statement of the skills to be mastered (goals and objectives);

-a description of content areas to be emphasized, methods to be employed, and materials to be used;

-a statement of appropriate management methods; and

-assurances that the child's progress will be evaluated every three months.

While the legislation and the Texas model provide basic outlines for the content of individual plans, they are vague. A statement of a child's present educational performance or "strengths and weaknesses" can encompass a range of evidence from hearsay or anecdotal reporting, to observation, or to performance on standardized measures.

Plans that require an assessment of "educational performance" and call for short term "instructional objectives" tend to focus primarily on academic goals and services. There may well be a need to encourage assessment and goal setting in such areas as social development and career training.

As with identification, a fine line must be walked between federal regulations that provide enough detail to insure state adherence to general policy directions while avoiding overly rigid provisions that stifle innovation. It is critical that federal regulations be framed to assure that states meet minimum performance levels while also assuring that more advanced and progressive states not be inhibited.

Policy issues concerning individualized plans involve:

> What kinds of information and goals are appropriate for individual plans? How can alternative models of individual plans be prepared for state and local education agency use?
>
> Aside from the due process safeguards, are there objective or specific measurable yardsticks to indicate educational performance that should be incorporated into individualized plans?
>
> What kinds of support and related services, other than instructional services should be incorporated into individualized plans?
>
> Can and should federal regulations define content specific aspects of individualized plans such as criteria for evaluating the child and his progress?
>
> How would such regulations affect existing state legislation regarding services for the handicapped?

Developing and Implementing Individualized Plans

The implementation of individualized programs will require the training and hiring of large numbers of professional and paraprofessional staff at the state and local levels. Effective training programs will be needed to instruct new individuals and current staff members in the design and initiation of individualized plans. While many of these training and in-service programs can be conducted at the local level, such programs typically vary considerably in design, scope, and implementation. State and federal technical and financial assistance to local agencies will be necessary to support manpower planning and development and to facilitate coordination between personnel of the various agencies with special education responsibilities.

The content of individualized programs will be shaped by those involved in their development. Determining who will participate in the design is, therefore, a key issue. The legislation specifies that the plan should be developed in a meeting involving a representative of the LEA, the teacher,

the parents or guardians and, if feasible, the child. Recent experiences with individual plans, however, suggest that a wider range of professional personnel might be desirable.

An experimental program in Dade County, Florida developed the following team: a diagnostic teacher, a consulting teacher, and a teacher aide. Texas requires the establishment of an Admission, Review, and Dismissal Committee composed of representatives of the administration, instructional staff, appraisal staff and various other personnel -- e.g., the nurse and the regular teacher in each school district. This Committee is responsible for determining the eligibility and change in status of each handicapped child and must outline an individual plan which is specified more completely by the teacher, diagnostician, and parents.

The role of teachers is critical in the development and implementation of individualized plans. Both Texas and Dade County, Florida experienced difficulties with teachers in their efforts to implement individualized programs. The Florida project had a high turnover rate in teachers specifically trained for the project. Such staff mobility can drain a school district of its trained personnel and increase the administrative costs of the program for personnel development.

Initial efforts at implementing individualized plans in Texas suffered from the perception by teachers that the plans were imposed on them by "experts." Evaluations indicated that plans were often either too general or too specific for teachers to use. This suggests that the teacher should play a central role in the planning process. While the desirability of teacher participation appears obvious, the feasibility of their participation may be complicated by collective bargaining agreements and other school regulations.

Another problem with teacher participation is the requirement that handicapped children participate as much as possible in "regular educational programs." Many classroom teachers are untrained to deal with the special needs of these children in a regular classroom environment and may have negative attitudes about handicapped children. Further, they may be anxious about dealing with the attitudes and reactions of the other non-handicapped children in the class. In addition, some parents of non-handicapped children may hold ignorant or archaic views about handicapped children that classroom teachers will also have to confront.

While the inclusion of a large number of individuals along with the teacher in the design of the individualized plan may be beneficial for the child, increasing the size of the planning team also increases the cost and the possiblity of disagreement among participants. In addition, while the legislation is designed to encourage parent participation, an increase in professional involvement may result in a decrease in active parent participation.

The policy issues related to the development and implementation of individualized plans are complex. They include:

> Who should participate in the development of individualized plans? Should regulations specify a uniform, if diverse, set of actors to insure consistency and a broad spectrum of views; or should state and local agencies be given complete freedom within the legislative requirements?
>
> What types of training and development programs are needed to train and retool the large number of individuals who will be needed to implement individualized programs?
>
> Who should be responsible for the content, focus, and cost of these programs?

What kinds of in-service training programs are needed to facilitate changes in attitudes and to advise teachers of the implications and responsibilities posed by PL 94-142?

What kinds of programs need to be developed to inform the public and change attitudes toward the handicapped?

How can the federal government assist states in their efforts to involve parents meaningfully in the diagnosis, planning, and evaluation of the educational services for their child?

Administering and Monitoring Individualized Plans

State Agency Coordination

A critical administrative issue regarding individualized programming as well as other aspects of PL 94-142 is the need for SEAs to coordinate programs, services, and training with other state agencies. The legislation requires the SEA to assure that all state programs for the handicapped, including those run by other state agencies, "be under the general supervision of the persons responsible for educational programs for handicapped children in the state educational agency." In addition, any such state program must conform to the "education standards of the state educational agency."

Such a provision raises questions for both state and local education agencies. What, for example, is meant by "supervision?" Is the SEA to have veto power over sections of other agency budgets if they fail to conform to SEA standards? Will special education programs in other public agencies require the approval of the state department of education? Given the jealousy with which administrative agencies guard their policy jurisdictions, is it realistic to expect them to surrender

their authority willingly? The task of administering this responsibility across agencies is a major one:

> How can coordination among state agencies with programs for the handicapped be facilitated?
>
> Can regulations be developed that will assist SEAs in their responsibility to supervise other state agencies?
>
> What are the legal and administrative barriers to the supervision of other state agency programs for the handicapped by the SEA?

Monitoring Individualized Plans

The legislation requires that both federal and state administrators measure and evaluate the impact of state and local programs -- including the individualized education plans. Since individualized plans by definition will have a wide variety of objectives, comparisons of program treatments and cost effectiveness will be difficult.

However, monitoring individual cases to assure compliance is feasible. In Texas, for example, the success of individual plans is measured by the extent to which the stated goals are achieved. Monitoring is done by tracking randomly selected students and measuring the plans against student progress.

Although PL 94-142 requires considerable monitoring of local programs and efforts by state officials, the shared traditions of education personnel at the federal, state, and local levels work against such oversight and pose potential problems in implementation of the law. Murphy documented this problem in his study of the implementation of Title I of ESEA:

> ...state and federal schoolmen know the problems faced by school administrators -- anxious parents

> problem children, striking teachers, empty coffers, and demands from all sides for more services, particularly if federal money is available. Sympathetic to the plight of their local peers and respectful of their professional judgment about the needs of children, federal and state officials are inclined to give local schoolmen freedom in developing their programs. [emphasis added][1]

Viewing themselves as professional educators or child advocates, state and federal education officials are not usually inclined to act as "policemen" or to embarass their "colleagues" at the local level.

Another problem facing many SEAs as they begin to administer PL 94-142 with its complex regulations regarding identification of children, development of individualized programs, and funding of LEA programs is that many of the central administrative staff are likely to be child advocates who are untrained in administration and management techniques. While an advocacy orientation stresses the importance of the individual child, experience with other federal legislation has indicated the need for staff trained in program administration, budgeting, evaluation, and management techniques as well.

In this instance the policy issues are:

> How shall the programs of individualized education plans be evaluated?
>
> What management skills are needed at the state and federal levels to effectively implement the law?
>
> How can present staff be retrained to acquire these skills?
>
> How can effective monitoring procedures be implemented that will assure compliance but not inhibit innovation?

---

[1] Jerome Murphy, "The Education Bureaucracies Implement Novel Policy: The Politics of Title I of ESEA, 1965-72," in Sindler (ed.) Policy and Politics in America, Boston: Little, Brown and Company, 1973, p. 195.

CHAPTER III

FINANCING OF EDUCATIONAL SERVICES FOR THE HANDICAPPED

PL 94-142 makes two types of funding available to the states: entitlements and incentive grants. Because the law is complex, it will be useful first to describe its major entitlement provisions and then to examine a number of the policy issues raised by those finance procedures.

State Entitlements

A state's entitlement is determined by multiplying the number of handicapped children between the ages of 3 and 21 who are receiving special services by a specified percentage of the national average per pupil expenditure. This percentage increases from 5 percent in the first year (approximately $60 per handicapped pupil in 1976) [1] to 40 percent in fiscal year 1982. The number of handicapped children used in this calculation is limited to 12 percent of the number of children aged 5 - 17 in the state. In addition, no more than one-sixth of the children identified can be classified as having "specific learning disabilities;"[2] and children who are counted under Section 121 of ESEA cannot be included.

---

[1] The National Education Association estimates average per pupil expenditures for 1973-74 at $1,121, (Rankings of the States, 1974). The U. S. Department of Health, Education, and Welfare estimates expenditures for the same period as $1,281, (The Condition of Education, p. 43). The $1,200 figure used here represents a compromise between these two. The state entitlement is 5 percent of the national average. Thus the entitlement would be $60 per pupil ($1,200 x .05).

[2] This provision will be eliminated after regulations have been approved which define specific learning disabilities and establish appropriate diagnostic procedures for identifying such children.

In the first year of the program 50 percent of the funds received by a state may be used for state expenditures. The remaining 50 percent must be distributed to LEAs. Five percent of the total funds received by the state and local agencies or $200,000, whichever is greater, can be used by the state for administration. This amount must be taken from the funds reserved for state expenditures. The remainder of state level funds are for support or direct services. The state is required to match equally funds which are used for this purpose. In the second year and every year thereafter the percentage of funds which can be expended by the SEA decreases to 25 percent.

Distribution of funds to LEAs and intermediate units is based on the proportion of the state's handicapped children aged 3 - 21 served by those units which apply for funds. For example, if an LEA serves 1,000 handicapped children and the units which apply serve 10,000 handicapped children, its proportion would be one tenth. If the total funds available to the LEAs and intermediate units were $100,000 then that LEA would receive $10,000.

No payments may be made to an LEA or intermediate unit if it is entitled to receive less than $7,500, or if it does not apply. In such cases the state remains responsible for provision of appropriate services.

If an SEA determines that an LEA is adequately providing services to handicapped children with state and local funds otherwise available, it may reallocate the federal funds that LEA is eligible to receive.

In addition to these allocation provisions, there are a number of criteria a state must satisfy to receive funds under this Act. To be eligible for funds a state must:

1. have in effect a policy that assures all handicapped children the right to a free appropriate public education;

2. submit an amended plan which sets forth policies to assure that:

   a. there is a goal and a timetable for providing full education services to the handicapped,

   b. services will be available for children 3 - 18 by September 1, 1978, and for children 3 - 21 by September 1, 1980, and

   c. procedures for identification have been established;

3. have established priorities with respect to:

   a. children who are not receiving services, and

   b. children who are receiving inadequate services;

4. assure that LEAs maintain records of individualized programs;

5. have safeguards and procedures to encourage mainstreaming and assure lack of cultural bias in testing;

6. assure that the SEA will be responsible for programs carried out under this act and will coordinate all programs for the handicapped in the state;

7. have established procedures for consultation with individuals involved with the education of the handicapped.

If a state is eligible, it must submit a detailed plan which assures:

1. that funds are used appropriately, that control of funds will be in a public agency, and that improperly used funds will be recovered;

2. inclusion of children in private institutions;

3. programs for personnel development;

4. that funds are not commingled with state funds or used to supplant state and local funds;

5. adequate program evaluation.

An LEA or intermediate unit that desires to receive funds must submit an application to the SEA which:

1. assures that payments will be used for excess costs in programs which provide for identification, confidentiality, and goals for full service to handicapped children;

2. assures that control of funds will be in a public agency, that funds will supplement state and local funds, and that comparable services are provided;

3. provides information on performance to the SEA;

4. provides that information in the application is made public;

5. assures that an individualized program for each child will be established and that procedural safeguards will be maintained.

Incentive Grants

In order to encourage states to develop their services to 3 - 5 year olds, a group not routinely and comprehensively served by LEAs, there is an incentive provision in this Act. The provision allows a state that has met the eligibility requirements and has an approved state plan to apply for additional funds for the handicapped that it serves in this age group. A state may receive a maximum of $300 per child.

Policy Issues

Inadequate Resources

Central to the success of PL 94-142 is the adequacy of resources. Congressional estimates of the cost of fully funding the law are as follows:

$387 million in 1978
$775 million in 1979
$1.2 billion in 1980
$2.32 billion in 1981
$3.16 billion in 1982[1]

[1]These estimates were obtained in discussions with U. S. Senate and Office of Education staff members. To derive these totals projections of the number of handicapped served were multiplied by the entitlement per pupil. The entitlement was obtained by multiplying the federal percentage for each year (5% in 1978, 10% in 1979, 20% in 1980, 30% in 1981, and 40% in 1982) by the projected national average per pupil expenditures.

If appropriations do not provide a substantial proportion of the entitlements, state and local education agencies may find that the money required to qualify for the program is not offset by the amount they receive. For example, if the present FY 75 appropriation of $100 million is tripled to $300 million by 1979 (the second year of the program), only $47 per pupil will be available to local school districts. This estimate derives from the fact that after the state share (25 percent) is deducted, $225 million will remain for distribution to local units. Thus if 4.75 million handicapped children are being served,[1] each pupil will receive only $47.37.

This problem will be magnified in the first year of the program when appropriations will presumably be less and states will keep 50 percent of the total allotment. It is reasonable to question whether the amounts provided will be large enough to cover the expenses generated by the comprehensive identification, planning, and procedural safeguard provisions incorporated in the legislation. If they are not, it is conceivable that local areas and some states may decline to participate in the program.

In addition, inadequate funding may result in a higher proportion of expenditures for state level administration than is desirable. States are permitted to keep 5 percent of the total funds received or $200,000, whichever is greater, for administrative costs. Funds at the state level must be equally matched except those used for administration. With an appropriation level of $300 million it is possible that a large number of states could use the entire state share for administration. States having less than 12,600 handicapped children would receive $200,000 or less

---

[1] National Center for Educational Statistics, The Condition of Education Washington, D. C. 1975, Table 40, p. 165.

for the state share.[1] Since administrative funds do not contain a matching requirement, there is a built-in incentive for states to use as large a share as possible for administration. Therefore, in regard to adequacy of funding the issues are:

> Are there sufficient incentives in the legislation to assure state and local participation in light of the relatively small per pupil allotment that may be received?
>
> If not, how can such incentives be designed and encouraged by the BEH?
>
> In view of the likelihood of appropriations that do not equal entitlements, can regulations assure that excessive amounts are not spent on state administration?

Excess Costs

Embedded in these legislative provisions are a number of substantial policy issues that will require resolution through regulations. Paramount among them is the change from the simple entitlement funding of PL 93-380 to the PL 94-142 approach requiring local districts to apply funds received under the act to the excess costs of educating handicapped children. The issues in implementing this provision relate to the determination of base costs of educating all pupils as well as to the additional costs of instructing the handicapped.

In determining the base costs of education regulations will have to address the issue of establishing common definitions of cost elements across state boundaries. In an area where practices differ substantially

[1] With an appropriation of $300 million in the second year of the program, and 4.75 million handicapped children, the entitlement per child would be $63.16 ($300 m./4.75 m.). In order for a state to use $200,000 at the state level, it must be entitled to $800,000. To be entitled to this amount it must have at least 12,666 handicapped children ($800,000/$63.16).

among states, the question is both complex and controversial. For example, in some states the costs of employee retirement benefits are met at the state level and do not appear in locally reported per pupil expenses. In other states, however, these costs are borne at the local level and constitute an expense item contributing to local reported per pupil costs. Federal efforts at encouraging greater accounting uniformity have a long and largely unsuccessful history, and BEH should be aware of the problems it will encounter if it requires states to significantly change their accounting practices.

This problem of definition is intensified in identifying the excess costs of educating the handicapped. While it may be possible to isolate certain direct costs in self-contained special education classes at the district level, accounting becomes far more questionable if one tries to include indirect costs or tries to identify the excess costs of mainstreaming children.

Another problem is the level of aggregation. Should costs be compared at the classroom, school, or district level? In most states variations in spending among districts range up to 2:1 or 3:1. A requirement that all districts spend in excess of the average per pupil expenditure in the state would be impossible for low spending districts to meet. Even within districts substantial disparities exist from school to school. Furthermore, if the requirement is interpreted to use a districtwide average in determining excess costs, reliable school data will be difficult to obtain in most districts.

A similar problem has been encountered in implementing the regulations for Title I comparability which requires that schools receiving Title I funds spend at least 95% of the non-Title I per pupil average from state and local funds. It is important that "excess cost" regulations consider the Title I requirement and assure that any definitions of handicap excess cost are not in conflict with provisions for the disadvantaged. Without such consideration potential conflicts would impose unnecessary administrative burdens and could make complying with both requirements difficult, if not impossible.

Questions related to excess costs are then:

> How should average per pupil costs be defined? How can conflicting state practices be accommodated?
>
> What expense elements should be included as excess costs for educating the handicapped, and what should be the level of aggregation for comparison: classrooms, schools, or districts?
>
> How can PL 94-142 requirements on excess costs be harmonized with Title I comparability regulations?

Erosion of Services

While a basic purpose of the law is to encourage the provision of full services to handicapped children, there may well be a potential incentive to decrease expenditures per pupil in order to serve more children and receive more funds. This possibility exists because entitlements are based on numbers of handicapped children served. While other provisions might forestall this problem through prohibiting "supplanting" and requiring "adequate" individual programs, the interrelationship of these sections must be carefully articulated in the regulations to avoid incentives to increase numbers of children served by decreasing the extensiveness of

existing programs. In particular, the supplanting provision is sufficiently general in tone to allow for diverse interpretations. For example, if the prohibition is phrased in total rather than per pupil terms, it may allow states to count additional pupils for the same amount of money. On the other hand, if supplanting is defined in per pupil terms, it may inhibit program flexibility. The issues are therefore:

> How can regulations be developed that avoid incentives to program erosion?
>
> How should supplanting be defined?

State Discretion

SEAs are allowed to reallocate funds from LEAs whenever an SEA determines that an LEA is "adequately providing a free appropriate public education to all." This may be another instance where a provision of the law might work at cross purposes to its overall intent. Since the law itself provides neither a definition of what constitutes an adequate education nor a description of the procedures that a state must undertake to make such a determination, regulations in this area are extremely important. Without regulations this provision might well discourage progressive districts from improving services, since such improvements might lead to loss of funds. Further, such a provision raises the question of whether the federal government or each state should define an "adequate program."

The question of the latitude for state discretion also arises in the imposition of caps on the number of handicapped children. A 12 percent limit is placed on the proportion of a state's population that may be classified as handicapped.[1] This expresses Congress' intent of avoiding classification of artificially large numbers of children. Similarly,

[1]The number of handicapped children counted cannot exceed 12% of the number of children in the state aged 5 - 17.

the temporary limitation to one-sixth of those identified as having specific learning disabilities implies a fear of mislabelling youngsters into a vague, uncertain classification. Yet both of these limits apply only at the state level and the possibility of competitive mislabelling among LEAs remains. For example, it is possible that wealthier, more sophisticated districts might identify 15 or 20 percent of their pupils as handicapped, while poorer, less enterprising districts classify only 7 to 10 percent. Or, we might find suburban school districts serving a handicapped population that is categorized as 12 percent specific learning disabilities, while a low socio-economic, high minority group LEA has a population classified as 12 percent educably retarded. The policy issues regarding state discretion are then:

> How much state discretion should be allowed?
>
> How can the possibility of penalizing districts that are most effective in fulfilling their responsibility be avoided? Is there a need for federal guidance of states in this area?

LEA Eligibility

Another issue that generates questions about state/local relationships applies to the limitation prohibiting local participation if a unit is entitled to less than $7,500. In the first year participating states are entitled to 5 percent of the national average per pupil expenditures for each handicapped child they serve. With a national average per pupil expenditure of approximately $1,200, this comes to a total of $60 per handicapped child served ($1,200 x .05). The law allows the state to keep 50 percent of the entitlement the first year. This means LEAs are entitled to $30 per child the first year. Thus for a local unit to be eligible in view of the $7,500 floor, it must be serving at least 250 handicapped

children ($7,500/$30). Assuming that LEAs find and serve 10 percent of their pupil population, an LEA would have to have a population of over 2,500 to be eligible for funding under the Act. This cutoff point would eliminate LEAs serving nearly 20 percent of the school age children and would make 76 percent of the school districts in the United States ineligible[1] unless they combine and form intermediate units. In subsequent years, however, as the percent of the national average increases and more districts exceed the $7,500 limitation, they will become eligible to participate in the program.

It would appear that the critical issues concerning LEA eligibility are the following:

> What provisions should the state and federal government make to encourage the newly eligible LEAs to take over the responsibility for educating handicapped youngsters?
>
> Similarly, if states are obligated to assure services when LEAs do not apply, are incentives necessary to encourage LEAs to make application?

Interaction of Federal and State Programs

Finally, underlying the finance issues discussed above is the basic question of whether federal law and regulation can be effectively integrated with state school finance provisions. During the last three years substantial change has taken place in state school funding due to legal decisions and legislative reforms. Nearly 20 new state laws

---

[1]Assuming an incidence rate of 10 percent, a school district must have 2,500 pupils to receive funds. According to National Center for Educational Statistics' The Condition of Education (p. 167), 76 percent of U. S. school systems have less than 2,500 pupils. These districts enroll 19.5 percent of the pupils in public school systems.

have been passed to address equity issues concerning revenue raising and resource distribution. These state laws have been relatively expensive since equity has required added revenues to "level up" low spending school districts.

Many of new statutes address the education of the handicapped. Pupil weighting systems, new categoricals, fiscal equalization for existing categorical programs have all been adopted to cover special education needs. The amount of funding available for such pupils has been markedly increased. Given this interest and growth in state programs for education of the handicapped, as well as the complex laws and regulations which exist in the other states, it is important that federal regualtions accommodate, encourage, and benefit from knowledge of state provisions for the handicapped. Questions that must be addressed in the implementation of PL 94-142 are then:

> How can the implementation of PL 94-142 avoid conflict between fiscal equalization reform and special education needs?
>
> How can the regulations and monitoring of PL 94-142 accommodate and encourage new state approaches to funding education for the handicapped?

CONCLUSION

The Education for All Handicapped Children Act of 1975 provides a new standard in magnitude and comprehensiveness in federal aid to education. It is intended to assure that all handicapped children have a free and appropriate education geared to their individual needs. States are entitled to a substantial portion of federal support to cover a portion of the costs of meeting those ambitious goals. Whether that law will accomplish its purposes will, however, depend on far more than the careful policy development and legislative draftsmanship that its proponents and sponsors have provided. Regulations and guidelines must be developed in several critical areas. These chapters were developed at the request of BEH to assist in that process. They provide a systematic analysis of policy issues relating to three central provisions of the law: the identification of all handicapped children, the development of individualized educational programs, and the financing of full services.

In developing these papers we have given attention to state developments, procedures, and funding practices. Our research, conducted over only a few weeks, involved an analysis of federal legislation; a review of selected state programs; an examination of the professional literature; and numerous discussions with scholars and practitioners in the field.

We believe that these chapters present a difficult and sensitive agenda for policy implementation. However, if these issues are addressed forthrightly, intelligently, and cooperatively by federal, state and local officials and by professionals, group leaders and other interested parties, it is our judgment that PL 94-142 can make a significant contribution to improving education of the handicapped.